with a view to simplifying the issues for the jury, appointed an auditor to examine 700 items set forth in the schedules filed by the parties and to express an opinion as to the amount due to the plaintiff. The plaintiff filed a petition for a writ of mandamus, prohibition or both, praying that the District Court and the auditor be restrained from proceeding under the order appointing him. *Held,* Mr. Justice McKenna, Mr. Justice Pitney and Mr. Justice McReynolds dissenting, petition denied. *In re Peterson* (1920) 40 Sup. Ct. 543.

Ordinarily federal practice must conform to the practice of the courts of the state in which the federal court is sitting. (1872) 17 Stat. 197, U. S. Comp. Stat. (1916) § 1537. Nevertheless, though the state in which it is sitting may do so, a federal court has no power to refer an action at law involving a long account to an auditor to hear and determine all the issues without the consent of the parties, as such a reference would deprive them of their constitutional rights to a trial by jury. *The Howe Machine Co.* v. *Edwards* (C. C. 1878) 15 Blatchf. 402; see *United States* v. *Wells* (D.C. 1913) 203 Fed. 146, 149. But where the auditor's report is not conclusive, but merely *prima facie* evidence, as in the instant case, these rights are not invaded, for only procedure is affected. *Fenno* v. *Primrose* (C. C. A. 1903) 119 Fed. 801; *Holmes* v. *Hunt* (1877) 122 Mass. 505; *contra, Francis* v. *Baker* (1874) 11 R. I. 103. At first thought, such a preliminary hearing seems to involve the examination of a party before trial, which a federal court cannot require even though a statute of the state where the federal court is sitting permits such examination, for the reason that it is not given discretion to take depositions not authorized by federal statute. *Hanks Dental Ass'n.* v. *International Tooth Crown Co.* (1904) 194 U. S. 303, 24 Sup. Ct. 700. However, the Hanks case can be distinguished from the instant case on the ground that the examination of a party before trial is in conflict with a federal statute (1827) 4 Stat. 199, U. S. Comp. Stat. (1916) § 1468; *Ex parte Fisk* (1885) 113 U. S. 713, 5 Sup. Ct. 724, while the appointment of an auditor in aid of jury trials has not been made the subject of Congressional legislation. Furthermore, the depositions in the Hanks case were received as evidence, while in the instant case only the report of the auditor was so received. And so the conclusion of the court in the instant case that, although unauthorized by statute, it has inherent power to compel the reference of an action at law involving a long account to an auditor, seems sound, particularly in view of the fact that such practice would seem to be prerequisite to the intelligent consideration of the case by a jury, the function of the auditor being the same as that of pleading in so far as his task is to define and simplify the issues.

UNFAIR COMPETITION—FEDERAL TRADE COMMISSION—PLEADING.—The petitioners sought to set aside an order of the Federal Trade Commission requiring them to desist from refusing to sell cotton ties and bagging except in conjunction with each other. The ties and bagging were manufactured by two corporations, each practically a local monopoly of which the plaintiffs were sole agents. The complaint before the Commission had merely set forth the practice of the petitioners without alleging the monopoly which made the practice unlawful. In the proceeding, however, full evidence was offered as to these additional circumstances. *Held,* Justices Brandeis and Clark dissenting, since the complaint before the Commission was insufficient to state a cause of action, the order based thereon will be set aside. *Federal Trade Commission* v. *Gratz et al.* (1920) 40 Sup. Ct. 572.

The Federal Trade Commission is an administrative and not a judicial body. It cannot enforce its orders. This power is granted to the Circuit Court of Appeals whose jurisdiction "to enforce, set aside or modify orders of the Commission is exclusive". Federal Trade Comm. Act (1914) 38 Stat. 311, § 5, U. S. Comp. Stat. (1916) § 8836e. Hence this court has original jurisdiction. Moreover, the Commission is essentially an accusing body, rather than an impartial tribunal, for it makes its own complaint which it need not file until it "has reason to believe" that the law has been violated. (1915) 15 Columbia Law Rev. 115, 118. Federal Trade Comm. Act, *supra;* Harlan & McCandless, Federal Trade Commission (1916) § 30. Similar administrative tribunals do not insist upon a strict observance of the rules of formal pleading. *Clinton Sugar Refining Co.* v. *Chicago & N. W. Ry.* (1913) 28 I. C. C. 364; *Board of Trustees, etc.* v. *Erie R. R.* (N. Y. Pub. Serv. Comm. 1915) P. U. R. 1915 D 308; *Public Utilities Comm.* v. *Boston & Me. R. R.* (Me. Pub. Utilities Comm. 1917) P. U. R. 1917 F 482. The complaint, however, must clearly point out the acts complained of. *United States Leather Co.* v. *Southern Ry.* (1911) 21 I. C. C. 323. If the complaint is sufficient in this respect, an order of the tribunal will be sustained though based on facts revealed in the investigation and as to which the complaint was silent. *New York Cent. & H. R. R. R.* v. *Interstate Com. Comm.* (C. C. A. 1909) 168 Fed. 131; *cf. Cincinnati, Hamilton, etc. Ry.* v. *Interstate Com. Comm.* (1907) 206 U. S. 142, 27 Sup. Ct. 648. Similarly, relief not requested by the complaint but based on findings of the Commission will be granted. *St. Louis, S. W. R. R.* v. *United States* (D. C. 1916) 234 Fed. 668. The general principle seems to be that if the allegations are substantial and sufficient fairly to apprise the defendant of the issues, the complant will be upheld. *Dickerson* v. *Louisville & N. Ry.* (C. C. A. 1910) 187 Fed. 874. In the instant case the inadequacy of the pleadings was not raised by the parties, a review of the evidence only having been requested. Thus it was not incumbent on the court to examine the sufficiency of the original complaint. The effect of the instant case seems to be to entangle the Federal Trade Commission in the intricacies of pleading.